
TRAFFICKING IN PERSONS (PREVENTION, CARE AND REHABILITATION) BILL, 2021: A NEED OR A COMPLICATION?

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ABSTRACT

Human trafficking, particularly for sexual exploitation, has become a concerning global issue, posing a severe threat to human rights. India has implemented various legislative measures, such as Section 370 of the Indian Penal Code and the Immoral Traffic in Persons Act of 1956, to combat this heinous crime. Despite these efforts, the multifaceted nature of human trafficking, including sex and labour trafficking, continues to persist. Victims are often trapped in exploitative labour conditions, enduring harsh treatment, and intergenerational bonded labour, perpetuating a cycle of exploitation. This dire situation is exacerbated by socio-economic factors and the involvement of organized crime syndicates. Such criminal activities violate the fundamental rights of victims, highlighting the need for robust legal frameworks and supportive social structures. The recently proposed Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, however, has significant limitations. It fails to address rehabilitation adequately, lacking provisions for community-based rehabilitation and neglecting to define reintegration or allocate sufficient funds for survivors' rehabilitation. The bill also lacks institutional accountability and appropriate mechanisms for addressing online abuse, further diminishing its potential to combat human trafficking effectively. This shortfall undermines the bill's effectiveness in addressing the long-term needs of trafficking survivors and preventing them from falling back into exploitative situations. The bill's conflation of trafficking with consensual sex work or prostitution presents another significant obstacle. By criminalizing sex work as a profession, the bill inadvertently hampers efforts to identify and support trafficking victims who may be engaged in sex work voluntarily or involuntarily. This approach not only stigmatizes sex workers but also impedes their access to essential support services and legal protection, ultimately hindering efforts to combat trafficking effectively. By prioritizing rehabilitation, distinguishing trafficking from consensual sex work, and implementing measures to address online abuse, India can strengthen its efforts to protect the rights of

trafficking victims and prevent further exploitation. Addressing these shortcomings is critical in creating a comprehensive and robust legal framework to combat the pervasive issue of human trafficking.

Keywords: Human Trafficking, Rehabilitation, Consent, Sex Work, Rescue.

I. Introduction

Human trafficking for the purpose of sexual exploitation is a growing global concern. This illegal trade is recognized as the world's fastest-growing criminal industry, posing a significant threat to human rights and dignity. India, in response to this grave issue, has taken legislative measures to combat human trafficking. Section 370 of the Indian Penal Code¹ prohibits the trafficking of individuals for sexual or physical exploitation, slavery, forced labour, and organ removal. Furthermore, India's endorsement of the Palermo Protocol² led to amendments in the IPC, resulting in a comprehensive prohibition of human trafficking for sexual exploitation.

The Immoral Traffic in Persons Act of 1956³ also plays a crucial role in combatting this heinous crime by outlawing the procurement, inducement, or transportation of individuals for prostitution. Similarly, the Protection of Children from Sexual Offences Act of 2012⁴ provides legal protection against a range of sexual offenses targeting minors below the age of 18. This legislative framework represents India's commitment to eradicating human trafficking and safeguarding vulnerable populations.

Human trafficking encompasses various forms, including sex trafficking, labour trafficking, and organ trafficking. Sex trafficking involves the exploitation of individuals in prostitution, while labour trafficking involves coercing individuals into non-sexual forms of labour. Shockingly, more than half of the victims are ensnared in forced or bonded labour, enduring gruelling work hours in sectors such as brick kilns, textile factories, agriculture, and stone quarries. Many of these victims are deceived with false promises of lucrative employment opportunities, only to find themselves trapped in insurmountable debt, perpetuating a cycle of

¹ Indian Penal Code, 1860, §370, No. 45, Acts of Parliament, 1860, (India).

² Palermo Protocol, UN General Assembly, Office of the United Nations High Commissioner for Human Rights, 2000.

³ Immoral Traffic in Persons Act, 1956, No. 104, Acts of Parliament, 1956, (India).

⁴ Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012, (India).

exploitation they cannot break free from.⁵

These victims endure deplorable living and working conditions, under the control of manipulative employers who view them as mere commodities. Disturbingly, some families are caught in intergenerational bonded labour, where the debts of deceased workers are unfairly passed down to their children, siblings, or parents.⁶ This cruel practice perpetuates a cycle of exploitation and denies these individuals the basic human rights and dignities they deserve.

Human trafficking is often linked to organized crime syndicates that thrive on exploiting vulnerable individuals for economic gain. This reprehensible practice violates the fundamental human rights of victims, including their personal autonomy and bodily integrity. Various socio-economic factors contribute to the prevalence of human trafficking, including poverty, illiteracy, limited livelihood options, and gender-based discrimination.⁷ The greed and callousness of perpetrators perpetuate this injustice, highlighting the need for robust legal frameworks and supportive social structures to prevent and combat this abhorrent crime.

II. Trafficking in Persons Bill

The Indian government passed the Trafficking of Persons Bill in 2021,⁸ aiming to prevent and counter trafficking, particularly focusing on women and children. The bill aims to provide care, protection, and rehabilitation to victims while upholding their rights and establishing a supportive legal, economic, and social environment for their reintegration into society. It applies to all Indian citizens within and outside the country, individuals on Indian-registered ships or aircraft, foreign nationals or stateless persons residing in India during the commission of trafficking offenses, and any cross-border trafficking incidents.⁹

Initially drafted in 2018 by the Ministry of Women & Child Development, the Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018, was passed by the Lok Sabha in the Monsoon Session of Parliament. However, it lapsed after the dissolution of the 16th Lok

⁵ Bhaskar, Neelakshi, and Neolexvision Blogs. "Objectives and Applicability of the POCSO Act, 2012 Explained Through Cases." Social Science Research Network, 2021, <https://doi.org/10.2139/ssrn.3826187>. Last accessed on 03rd November 2023.

⁶ Gray, Mikhaela Mary. "SOLD: The Human and Economic Costs of Trafficking Women and Girls." 2018, <https://core.ac.uk/download/161989729.pdf>. Last accessed on 04th November 2023.

⁷ Human Trafficking in India - The Exodus Road. <https://theexodusroad.com/human-trafficking-in-india/>.

⁸ The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.

⁹ IJICC - Vol 10 Iss 8. <https://ww.ijicc.net/index.php/volume-10-2019/144-vol-10-iss-8>. Last accessed on 03rd November 2023.

Sabha and the inability of the Rajya Sabha to consider it. The bill was later revised with a greater emphasis on victim-centric approaches and a comprehensive framework to address human trafficking as a crime against humanity and an economic offense.¹⁰

The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, fails in addressing the arena of rehabilitation as it lacks to provide for community-based rehabilitation, missing definition of reintegration and about the funds related to rehabilitation of survivors in the bill. The proposed Bill also criminalizes sex work and the choice of sex work as profession. The Draft Trafficking Bill has mixed up the issue of trafficking and consensual sex work/prostitution. Another problem with the bill is the lack of institutional accountability and inadequacy of legal machinery for online abuse.

Research Objectives

1. Analysing the consequences and problems associated thereto of the trafficking in persons bill,2021 in area of consent and prevention.
2. Explorative study into the effectiveness of rehabilitation of victims and their rescue under the legislation.

III: Prevention and Consent

Primarily, the bill encounters various obstacles in the realm of prevention. A key challenge involves the effective implementation of preventive measures at the grassroots level. Despite the provision of stringent legal frameworks, the lack of awareness and resources often hinders the successful execution of preventive strategies. The fragmented nature of law enforcement agencies and their limited coordination exacerbate the problem, leading to gaps in the enforcement of anti-trafficking measures. Consequently, vulnerable communities remain susceptible to exploitation, allowing perpetrators to operate with impunity.

Besides, the bill's efficacy in combating trafficking is impeded by the pervasive socio-economic vulnerabilities prevalent in certain regions. Poverty, illiteracy, and lack of employment opportunities contribute to the vulnerability of marginalized communities, making them easy targets for traffickers. The absence of comprehensive socio-economic policies aimed

¹⁰ Anti Trafficking | GovernanceNow.com. <http://www.governancenow.com/category/tags/anti-trafficking>.

at addressing these root causes diminishes the bill's potential impact on preventing trafficking. Consequently, a holistic approach that integrates socio-economic development programs with anti-trafficking measures is imperative for the bill to yield substantial results.

The issue of consent also poses a significant challenge within the context of the bill. Despite its emphasis on the protection of victims' rights and the provision of rehabilitation services, the bill's approach to addressing the complexities of consent is often inadequate. The diverse circumstances under which consent is obtained or manipulated by traffickers necessitate a nuanced understanding of the psychological coercion and power dynamics involved. The current legal framework often falls short in acknowledging the intricacies of coercive control, psychological manipulation, and the trauma-induced responses that victims experience, resulting in an oversimplified understanding of consent.

Additionally, cultural, and societal norms perpetuate victim-blaming attitudes, posing a substantial hindrance to the bill's effective implementation. Stigmatization and social ostracization of survivors further exacerbate the challenges associated with obtaining meaningful consent. The prevailing culture of silence and fear prevents victims from coming forward, thereby impeding the prosecution of perpetrators, and perpetuating the cycle of exploitation.

To address these challenges, integrating a victim-centred approach within the bill's framework is imperative. This entails the provision of comprehensive support services that prioritize the psychological well-being of survivors and empower them to participate actively in legal proceedings. Raising awareness through targeted educational campaigns, especially in vulnerable communities, can help foster a culture of vigilance and resilience against trafficking. Strengthening inter-agency collaboration and coordination can enhance the effectiveness of preventive measures by facilitating the seamless exchange of information and resources.

Likewise, fostering collaboration with non-governmental organizations and civil society groups is essential in bridging the gaps in the implementation of the bill. These organizations play a pivotal role in providing on-ground support to survivors and advocating for their rights, thereby complementing the efforts of the government in combating trafficking.

A multi-faceted approach that combines comprehensive socio-economic development initiatives, victim-centred support services, and collaborative efforts among various

stakeholders is essential. Only through concerted and holistic efforts can the bill realize its true potential in combating the scourge of human trafficking and ensuring the protection and empowerment of its victims.

IV: Rehabilitation and Rescue

While the Bill provides rehabilitation to the survivors, it does not extend the relief beyond shelter homes. There is a demand for a community-based rehabilitation model that provides health services, legal aid, access to welfare schemes and income opportunities crucial for ensuring “all-round reintegration of victims” back into their community and family.

According to the United Nations’ human rights experts, it was not in accordance with the international human rights laws. The Bill was criticised for addressing trafficking through a criminal law perspective instead of complementing it with a human-rights based and victim-centred approach.

It is also criticised for promoting “rescue raids” by the police as well as institutionalisation of victims in the name of rehabilitation. It was pointed out that certain vague provisions would lead to blanket criminalisation of activities that do not necessarily relate to trafficking.

Once “rescued,” the victims are to be produced before the magistrate and thereafter sent to Protection Homes or Rehabilitation Homes. If the victim cannot be repatriated, the rehabilitation process provided for in the Bill comes to an end at this point. However, unless there is targeted economic empowerment and skill building of rescued victims, victims will be forced to go back into their previous profession. In India, under their anti-trafficking laws, various NGOs have taken initiative to rehabilitate the victims of human trafficking.¹¹

Rehabilitating does not mean providing them protection home to the victim but also providing them livelihood, compensation, and free service to health care facilities through which they can cure their sexually transmitted diseases. In India, most of the state's government has started compensation policies but lack of proper administration has led to failure.¹² A proper political

¹¹ Law School Policy Review & Kautilya Society, Band-Aid on a Septic Wound: The Anti-Trafficking Bill, 2018, 20th ed. (2018) <https://lawschoolpolicyreview.com/2018/08/10/band-aid-on-a-septic-wound-a-comment-on-the-anti-trafficking-bill-2018/>. Last accessed on 03rd November 2023.

¹² Hlongwana, Khumbulani, and Themba Ginindza, "Mapping Evidence Regarding Decision-Making on Contraceptive Use among Adolescents in Sub-Saharan Africa: A Scoping Review," *International Journal of Environmental Research and Public Health* 20, no. 3 (2023): 2744. Last accessed on 03rd November 2023.

will is required as India is the home of one of the biggest populations of total Human trafficking victims.

Firstly, the bill's implementation of rehabilitation measures encounters challenges stemming from the lack of comprehensive and standardized rehabilitation protocols across various states and regions in India. The absence of a uniform approach often results in inconsistencies in the quality and accessibility of rehabilitation services, impeding the holistic recovery of victims. In many cases, survivors find themselves without access to critical resources such as psychological counselling, vocational training, and healthcare, which are essential for their long-term rehabilitation and reintegration into society. Thus, the lack of uniform standards in rehabilitation services hampers the bill's effectiveness in providing consistent and comprehensive support to trafficking survivors across the country.

The limited availability of specialized rehabilitation centres and facilities tailored to the unique needs of trafficking survivors poses a significant challenge to the successful implementation of the bill. While some regions may have basic rehabilitation facilities, these often lack the specialized resources and expertise required to address the complex psychological and emotional trauma endured by trafficking victims.¹³ The absence of specialized rehabilitation centres catering specifically to the diverse needs of survivors, including those with physical, psychological, and social vulnerabilities, significantly hinders their path to recovery and reintegration.

Moreover, the bill's focus on short-term rehabilitation measures often fails to account for the long-term needs of survivors, thereby undermining their sustainable reintegration into society. The absence of comprehensive post-rehabilitation support programs, such as job placement assistance, educational support, and long-term mental health counselling, limits the bill's capacity to ensure survivors' sustained well-being and empowerment. Consequently, many survivors, without adequate support, may find themselves at risk of re-trafficking or being marginalized within society, perpetuating the cycle of vulnerability and exploitation.

The stigmatization and societal discrimination faced by trafficking survivors present a formidable obstacle to their successful rehabilitation and reintegration. The prevalent social

¹³ "Restorative Justice and the Active Victim: Exploring the Concept of Empowerment," Temida (2011), <https://doi.org/10.2298/TEM1101005A>. Last accessed on 02nd November 2023.

attitudes that view survivors through a lens of stigma and judgment often lead to their marginalization and exclusion from mainstream society.¹⁴ This social ostracization not only hinders survivors' access to opportunities but also undermines their self-esteem and confidence, impeding their ability to lead dignified and independent lives post-rehabilitation.

The lack of a comprehensive framework for the involvement of survivors in the design and implementation of rehabilitation programs undermines the bill's effectiveness in addressing their unique needs and aspirations. The absence of survivor-led initiatives and participatory decision-making processes diminishes the sense of agency and empowerment among survivors, leaving them feeling disconnected from the rehabilitation efforts that directly impact their lives.¹⁵ In the absence of their active participation, the rehabilitation programs may fail to address the nuanced and individualized requirements of survivors, thus limiting the efficacy of the bill in ensuring their holistic recovery and empowerment.

To address these challenges, it is imperative to adopt a victim-centred approach that prioritizes the holistic well-being and empowerment of trafficking survivors. This approach should be grounded in the principles of inclusivity, empathy, and empowerment, ensuring that survivors are actively involved in the design, implementation, and evaluation of rehabilitation programs. Empowering survivors as active participants in their own recovery journey is essential for fostering a sense of agency, dignity, and self-reliance among them.

The establishment of specialized and comprehensive rehabilitation centres equipped with the necessary resources and expertise to address the diverse needs of survivors is crucial. These centres should provide a range of services, including trauma-informed counselling, vocational training, healthcare, and legal aid, tailored to meet the unique needs of each survivor. By providing specialized care and support, these centres can facilitate the comprehensive rehabilitation and reintegration of survivors into society, thereby breaking the cycle of vulnerability and exploitation.

The implementation of long-term support programs, such as job placement assistance, educational scholarships, and mentorship initiatives, is essential for ensuring the sustained

¹⁴ Lawler, M, et al., "Critical Research Gaps and Recommendations to Inform Research Prioritisation for More Effective Prevention and Improved Outcomes in Colorectal Cancer," *Gut* (2017), <https://doi.org/10.1136/gutjnl-2017-315333>. Last accessed on 06th November 2023.

¹⁵ "Panther roadkill gruesome wake-up call," *The Sun Daily*, <https://www.thesundaily.my/home/panther-roadkill-gruesome-wake-up-call-BB11015411>. Last accessed on 03rd November 2023.

well-being and socio-economic empowerment of survivors. These programs should be designed to provide survivors with the necessary skills, resources, and opportunities to lead independent and self-sufficient lives, free from the risk of re-trafficking and social exclusion.

Raising awareness and sensitizing the public about the complexities and challenges faced by trafficking survivors is crucial in combatting the stigma and discrimination prevalent in society. Educational campaigns and community engagement initiatives can play a pivotal role in fostering a culture of empathy, understanding, and support for survivors, thereby facilitating their smooth reintegration into mainstream society.

Fostering collaboration and partnership between government agencies, non-governmental organizations, civil society groups, and other stakeholders is essential in ensuring the effective implementation of rehabilitation programs.¹⁶ By leveraging the expertise, resources, and networks of various stakeholders, the bill can effectively address the multifaceted needs of survivors and create a supportive ecosystem that fosters their holistic recovery and empowerment.

To ensure the holistic recovery and reintegration of trafficking survivors, it is imperative to adopt a victim-centred approach that prioritizes their agency, dignity, and well-being. By establishing specialized rehabilitation centres, implementing comprehensive support programs, raising public awareness, and fostering multi-stakeholder collaboration, the bill can effectively address the complex challenges faced by survivors and pave the way for their sustainable rehabilitation and empowerment.

V: Sex work and trafficking

In India, the conflation of consensual sex work with trafficking represents a significant challenge in the efforts to combat human trafficking and protect the rights of individuals engaged in sex work. This conflation leads to a skewed understanding of the nuanced realities of the sex industry, often resulting in the misidentification of consensual sex workers as trafficking victims.¹⁷ This misclassification not only undermines the agency and autonomy of

¹⁶ Banes, David, et al., "Using Information Communications Technologies to Implement Universal Design for Learning" (2020), <https://core.ac.uk/download/427732146.pdf>. Last accessed on 06th November 2023.

¹⁷ Mumbai Police Foil Human Trafficking Attempt, Rescue Girl - Mumbaikar News: Digital News & Info Destination for the Mumbaikars. <http://www.mumbaikarnews.in/mumbai-police-foil-human-trafficking-attempt-rescue-girl/>. Last accessed on 03rd November 2023.

consenting adults involved in sex work but also hinders the effective allocation of resources and support for genuine trafficking victims.

One of the primary challenges stemming from the conflation of consensual sex work with trafficking in India is the perpetuation of stigma and discrimination against individuals engaged in sex work.¹⁸ The societal perception of all sex workers as victims of exploitation reinforces the prevailing stigma and moral judgment attached to the sex industry. This stigma often leads to the marginalization and social exclusion of sex workers, depriving them of access to basic rights, healthcare, and legal protection. The prevailing social stigma and discrimination also create barriers to the implementation of comprehensive harm reduction programs and the provision of essential health services, thereby exacerbating the vulnerability of sex workers to various forms of exploitation and abuse.

The conflation of consensual sex work with trafficking further impedes the development of effective policies and interventions tailored to the specific needs and vulnerabilities of sex workers. In the absence of a nuanced understanding of the distinctions between consensual sex work and trafficking, the design and implementation of policies and programs often fail to address the unique challenges faced by sex workers. This not only limits the accessibility of essential support services, such as healthcare, legal aid, and social protection, but also perpetuates the cycle of vulnerability and exploitation within the sex industry.¹⁹

Moreover, the conflation of consensual sex work with trafficking contributes to the erosion of sex workers' agency and autonomy, denying them the right to self-determination and decision-making. By disregarding the voices and experiences of sex workers,²⁰ this conflation reinforces the paternalistic approach of viewing all individuals engaged in sex work as victims in need of rescue, rather than as empowered individuals capable of making informed choices about their bodies and livelihoods.²¹ This undermines the fundamental human rights of sex workers and

¹⁸ FOSTA-SESTA Threatens Sex Worker Livelihoods: What Mental Health Providers Should Know - Psychiatry Advisor. <https://www.psychiatryadvisor.com/home/practice-management/fosta-sesta-threatens-sex-worker-livelihoods-what-mental-health-providers-should-know/>.

¹⁹ NICWA Positive Indian Parenting – Tribal Justice. <https://tribaljustice.org/places/child-welfare-crimes-against-children/nicwa-positive-indian-parenting/>.

²⁰ Annie George, U Vindhya and Sawmya Ray, Sex Trafficking and Sex Work: Definitions, Debates And Dynamics, Vol. 45, No. 17 (April 24-30, 2010), Economic And Political Weekly, April 24-30, 2010, Pp. 64-73 <https://www.jstor.org/stable/25664387>. Last accessed on 03rd November 2023.

²¹ . "Philippines: Teen Center: Hub for Bonding, Interacting." MENA Report, vol., no., 2017. Last accessed on 03rd November 2023.

perpetuates their vulnerability to coercion and exploitation by pushing their work further into the shadows, away from legal and regulatory frameworks.

The conflation of consensual sex work with trafficking also hinders the accurate identification and protection of genuine trafficking victims within the sex industry. When all individuals engaged in sex work are automatically classified as victims of trafficking, the genuine victims of coercion and exploitation may remain unidentified and overlooked. This misidentification results in the inadequate allocation of resources and support for those in need, leaving genuine victims without access to critical services and assistance. Consequently, the conflation not only undermines the effectiveness of anti-trafficking efforts but also compromises the protection of individuals in situations of genuine exploitation and abuse.

One significant consequence of this conflation is the detrimental impact on the implementation of effective public health initiatives targeted at mitigating the spread of sexually transmitted infections (STIs) and HIV/AIDS among sex workers. The stigmatization of the sex industry and the reluctance to differentiate consensual sex work from trafficking hinder the adoption of evidence-based harm reduction strategies, including the provision of comprehensive sexual health education, access to condoms, and regular STI testing. This lack of access to essential health services not only endangers the health and well-being of sex workers but also poses a public health risk, contributing to the wider spread of infectious diseases within communities.

The conflation of consensual sex work with trafficking also leads to the criminalization of sex workers, thereby perpetuating their vulnerability to violence, exploitation, and abuse. In the absence of legal recognition and protection, sex workers often face harassment, extortion, and violence from law enforcement authorities and criminal elements.²² This not only exacerbates the marginalization and social exclusion faced by sex workers but also impedes their access to justice and redress for the violations they experience. The criminalization of sex work also perpetuates the cycle of poverty and vulnerability, forcing individuals into more precarious and unsafe working conditions, thereby increasing their susceptibility to trafficking and other forms of exploitation.

To illustrate the problems associated with equating consensual sex work with trafficking in

²² Steven Seidenberg and Winky Lewis, *Of Human Bondage: Slavery continues to haunt the modern world, but efforts to eradicate it are growing*, Vol. 99, ABA Journal, pp. 50-57, April 2013. Last accessed on 01st November 2023.

India, we can examine the case of Sonagachi, a red-light district in Kolkata. Sonagachi is one of the largest red-light areas in India, where thousands of sex workers engage in consensual sex work. Despite most of the workers engaging in sex work voluntarily and without coercion, the prevalent conflation of sex work with trafficking has led to the stigmatization and marginalization of the entire community.

The conflation has resulted in a lack of access to essential healthcare services and legal protection for the sex workers of Sonagachi. Due to the prevailing stigma and moral judgment, sex workers often face discrimination from healthcare providers, leading to a reluctance to seek medical assistance when needed. The lack of access to comprehensive healthcare services has contributed to the increased prevalence of STIs and other health-related issues among the sex worker community in Sonagachi, exacerbating their vulnerability to health risks and further marginalizing them within society.

Additionally, the conflation of consensual sex work with trafficking has led to increased police harassment and violence against the sex worker community in Sonagachi. Law enforcement authorities often view all sex workers as victims of trafficking, leading to frequent raids and arbitrary arrests, further perpetuating the cycle of violence and exploitation. The criminalization of sex work has also made it challenging for sex workers in Sonagachi to seek legal recourse for the injustices and violence they face, leaving them without access to justice and redress for their grievances.

The conflation has hindered the implementation of comprehensive social support programs and economic empowerment initiatives for the sex worker community in Sonagachi. The lack of nuanced policies and interventions tailored to the specific needs and vulnerabilities of sex workers has limited their access to skill development programs, alternative livelihood options, and social protection schemes. As a result, the sex worker community continues to face systemic barriers to socio-economic empowerment and remains trapped in a cycle of poverty and vulnerability.

To address the problems associated with the conflation of consensual sex work with trafficking in India, it is imperative to adopt a rights-based approach that recognizes the agency and autonomy of individuals engaged in sex work. This approach should prioritize the implementation of evidence-based policies and interventions that safeguard the human rights

and well-being of sex workers, including access to comprehensive healthcare services, legal protection, and socio-economic empowerment programs. By leveraging the expertise, resources, and networks of various stakeholders, it is possible to develop a comprehensive and inclusive framework that addresses the complex challenges faced by the sex worker community in India.

Furthermore, raising public awareness and sensitizing the broader society about the distinction between consensual sex work and trafficking is crucial in combatting the stigma and discrimination faced by sex workers. Educational campaigns and community engagement initiatives can play a pivotal role in fostering a culture of empathy, understanding, and support for sex workers, thereby challenging the prevailing misconceptions and stereotypes associated with the sex industry.

Hence, the conflation of consensual sex work with trafficking in India presents significant challenges that undermine the rights and well-being of individuals engaged in sex work. By adopting a rights-based approach that prioritizes the agency and autonomy of sex workers, fostering collaboration among various stakeholders, and raising public awareness, it is possible to address the complexities associated with this issue and ensure the protection and empowerment of sex workers in India.

VI: Issues and Challenges of the Bill

The necessity of introducing a new legislation to tackle human trafficking remains questionable, considering the sufficiency of existing provisions such as Sections 370 and 370A²³ of the IPC that specifically address trafficking. Comparing these sections with Section 23²⁴ of the Trafficking of Persons Bill reveals significant similarities, with distinctions primarily found in the phrasing.²⁵ The broad definition of "victim" in the Bill overlooks consensual commercial sexual activities, effectively criminalizing sex work and inadvertently victimizing those involved. The bill also mandates the reporting of such offenses, without considering the circumstances of sex workers who may face threats from perpetrators or those unwilling to file complaints.

²³ Indian Penal Code, 1860, §370A, No. 45, Acts of Parliament, 1860, (India).

²⁴ The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, §23.

²⁵ India: Comprehensive Legislation on Child Abuse. MENA Report, vol., no., 2019.

Fundamentally, the transportation of individuals from one location to another with the intent to traffic them remains the key criterion for an act to be classified as trafficking. Failure to make this a prerequisite in the Bill aligns it closely with provisions related to false imprisonment or kidnapping, potentially leading to overlapping cases and subjective application of relevant penal provisions.

Additionally, Section 55 of the Bill²⁶ grants it precedence over other laws in the event of discrepancies. This overriding effect poses several concerns, including the disregard for established criminal justice mechanisms and procedures, the potential adverse impact on children, and the likelihood of subjecting victims to multiple ordeals instead of streamlining the legal process.

Section 43 of the Bill²⁷ designates Special Courts for trying trafficking cases under the National Investigation Agency (NIA) Act, potentially exposing child victims to an environment and legal proceedings ill-suited for their sensitive needs. This setup raises questions about the training and sensitivity of the courts handling cases involving children, diverging from the mandate to establish Children's Courts under the Commission for Protection of Child Rights Act, 2005,²⁸ which are specifically equipped to handle various offenses against children.²⁹

The use of non-obstante clauses in these provisions may lead to the involvement of multiple agencies and authorities, potentially subjecting children to further victimization and prolonged exposure to traumatic experiences,³⁰ exacerbating the long-term psychological impact on these vulnerable individuals.

VII: Conclusion

The Trafficking in Persons Bill, despite its noble intentions, demonstrates several critical drawbacks in its approach to addressing the multifaceted challenges of human trafficking, particularly in the areas of rehabilitation, rescue, and prevention. The analysis of the bill highlights several shortcomings that must be urgently addressed to ensure the effective

²⁶ The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, §55.

²⁷ The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, §43.

²⁸ The Commission for Protection of Child Rights Act, 2005, No. 04, Acts of Parliament, 2005, (India).

²⁹ India: Implementation of POCSO Act 2012. MENA Report, vol., no., 2019.

³⁰ Almutairi, Arif. "Coastal Community Resilience Assessment Framework of Maritime Disasters Management for Saudi Arabia." <https://core.ac.uk/download/444050571>. Last accessed on 03rd November 2023.

protection and support of trafficking victims, the prevention of future incidences, and the successful rehabilitation of survivors.

In the context of rehabilitation, the bill falls short in providing comprehensive and holistic support for survivors of trafficking. The lack of sufficient provisions for long-term rehabilitation services, including psychological support, vocational training, and reintegration into society, undermines the prospects of survivors' successful recovery and reintegration. This gap not only hinders the healing process for survivors but also perpetuates their vulnerability to re-trafficking and social exclusion, thereby thwarting the bill's intended purpose of providing meaningful rehabilitation and support.

The bill's emphasis on punitive measures and criminalization often overlooks the complex socio-economic factors that contribute to the perpetuation of trafficking. The limited focus on prevention strategies, such as addressing root causes like poverty, lack of education, and gender-based discrimination, undermines the bill's potential to address the systemic issues that fuel trafficking. A more comprehensive and holistic approach that combines legal measures with targeted socio-economic interventions is crucial to effectively curbing the root causes and preventing future instances of trafficking.

In the realm of rescue operations, the bill's reliance on law enforcement agencies often leads to a lack of sensitivity and understanding of the specific needs of trafficking victims. The absence of robust victim-centric protocols and guidelines for rescue operations contributes to re-traumatization and re-victimization, rather than providing a safe and supportive environment for survivors.³¹ This approach not only undermines the trust between victims and law enforcement but also hinders the successful identification and rescue of victims, ultimately impeding the bill's capacity to combat trafficking effectively.

The absence of a comprehensive victim protection framework in the bill poses a significant obstacle to the successful prosecution of traffickers and the safeguarding of survivors. The limited provisions for witness protection and the absence of measures to ensure the non-revictimization of survivors during legal proceedings undermine the bill's efficacy in delivering

³¹ Anuradha Koirala, *Trafficking and Vulnerabilities of Children and Women: An Analysis*, Vol. 41, No. 3/4, *India International Centre Quarterly*, pp. 223-235, WINTER 2014 - SPRING 2015. Last accessed on 03rd November 2023.

justice and ensuring the safety of victims.³² Strengthening the legal framework to prioritize victim protection and support is crucial to ensure the bill's success in holding traffickers accountable and providing a secure environment for survivors to seek justice.

To address these significant drawbacks, it is imperative for policymakers and stakeholders to engage in a comprehensive review and overhaul of the current legislation. A victim-centric approach that prioritizes rehabilitation, prevention, and rescue, while also addressing the systemic socio-economic factors contributing to trafficking, should form the cornerstone of any legislative amendments. Collaborative efforts involving government agencies, civil society organizations, and international stakeholders are crucial to formulating a comprehensive and effective legal framework that upholds the rights and well-being of trafficking survivors and prevents future occurrences of trafficking. Such a concerted effort is essential to ensure the bill's alignment with international human rights standards and its effectiveness in combating the scourge of human trafficking.

³² Sawmya Ray, *Of Vulnerability and Coercion: A Study of Sex Trafficking in Assam*, Vol. 64, No. 3 (September-December 2015), *Sociological Bulletin*, pp. 305-324, <https://www.jstor.org/stable/26290744>. Last accessed on 03rd November 2023.